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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

POWER INTEGRATIONS, INC.,

Plaintiff,

v.

FAIRCHILD SEMICONDUCTOR
INTERNATIONAL, INC., FAIRCHILD
SEMICONDUCTOR CORPORATION, and
FAIRCHILD (TAIWAN) CORPORATION,

Defendants.

Case No. 3:15-cv-04854-MMC

**FAIRCHILD'S MOTION TO DISMISS
PI'S FIRST AMENDED COMPLAINT**

Date: April 8, 2016
Time: 9:00 a.m.
Location: Courtroom 7, 19th Floor
Before: Hon. Maxine M. Chesney

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, on April 8, 2016, at 9:00 a.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Maxine M. Chesney, of the United States District Court for the Northern District of California, Courtroom 7, 450 Golden Gate Avenue, San Francisco, Defendants Fairchild Semiconductor International, Inc., Fairchild Semiconductor Corporation, and Fairchild (Taiwan) Corporation (collectively “Fairchild”) will and hereby do move this Court to dismiss the First Amended Complaint (“Amended Complaint”) of Plaintiff Power Integrations, Inc. (“PI”) in the entirety.¹ Fairchild moves to dismiss the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) as set forth in the Memorandum of Points and Authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

PI’s Amended Complaint should be dismissed for three distinct reasons: (1) the allegations in the First Cause of Action constitute an improper collateral attack on this Court’s Order in a co-pending litigation; (2); the allegations in the First Cause of Action violate the bar against claim splitting; and (3) the allegations in First and Second Causes of Action (including paragraphs 19-23 and 32-36) fail to state a claim for relief for direct, indirect and willful infringement as required by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

First, by this lawsuit, PI attempts to circumvent this Court’s ruling in *Power Integrations, Inc. v. Fairchild Semiconductor International, Inc.*, Case No. C 09-5235-MMC (“*Fairchild IV*”) on U.S. Patent No. 6,212,079 (“the ’079 patent”). In the co-pending litigation, the Court found that PI failed to comply with the Patent Local Rules and, as a result, precluded PI from litigating infringement allegations against some of the very same products being accused in this case. The

¹ PI’s Amended Complaint (Dkt. 30) supersedes the Original Complaint (Dkt. 1) rendering the Original Complaint “without legal effect.” *Gustavson v. Wrigley Sales Co.*, 2014 WL 60197, at *3, n. 2 (N.D. Cal. Jan. 7, 2014) (“The Ninth Circuit has long held that ‘an amended complaint supercedes [sic] the original complaint and renders it without legal effect,’ *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir.2012) (en banc), and that a defendant is entitled to challenge an amended complaint in its entirety.”) As such, instead of filing a reply brief in support of its original Motion to Dismiss (Dkt. 25), Fairchild moves this Court to dismiss PI’s Amended Complaint.

1 Court should dismiss PI's '079 patent infringement claim as an impermissible collateral attack on
 2 this Court's previous Order.² When a party receives an adverse ruling with which it disagrees,
 3 several procedural options exist for challenging the ruling, such as a motion for reconsideration or
 4 an appeal. Filing a new lawsuit that directly contradicts the Order is not among them. If a party
 5 could simply file a new lawsuit to recapture contentions that were excluded under the Patent
 6 Local Rules, the rules would serve no purpose.

7 Second, claim splitting law also prohibits PI's '079 patent infringement claim. The claim
 8 splitting doctrine requires a plaintiff to raise in a single lawsuit all grounds of recovery arising
 9 from a single transaction or series of transactions that can be brought together. In the patent
 10 infringement context, courts apply the claim splitting doctrine to prevent a party from bringing a
 11 second action to assert claims or products that are the same as, or essentially the same as,
 12 products that are excluded from a first action. PI already has a pending case asserting the '079
 13 patent against Fairchild, and PI has repeatedly stated that its infringement theories for the models
 14 it seeks to accuse in this case are the same as the products being litigated in *Fairchild IV*. Thus,
 15 this claim is duplicative of PI's infringement allegations of the '079 patent in *Fairchild IV* and
 16 should be dismissed as improper claim splitting.

17 Third, PI's claims for direct infringement, willful infringement, induced infringement, and
 18 contributory infringement fail to properly plead sufficient facts. As such, PI's Amended
 19 Complaint fails to meet the Supreme Court's minimum pleading standards, which reject
 20 allegations—like those pled by PI—that are mere “conclusion[s] couched in factual allegations.”
 21 *See Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
 22 Dismissing PI's claims will not only comport with the Supreme Court's directives, but will also
 23 conserve judicial and party resources by eliminating claims (if PI is unable to amend its claims to
 24 meet the Supreme Court's standards), or focusing PI's claims on the relevant facts and issues (if

25 ² During the damages retrial in *Fairchild IV*, Fairchild mentioned a collateral estoppel issue in this
 26 case in passing. *Fairchild IV* Retrial Tr. at 1066:21-79:9. To be clear, the collateral estoppel
 27 mentioned there related to issue preclusion, a wholly separate and distinct contention from the
 28 *claim* preclusion associated with wrongful collateral attacks on prior rulings. During the
 colloquy, the Court presciently observed that it had issued “an order saying you [PI] can't
 shoehorn those claims into this case.” Ironically, PI now wrongly attempts to “shoehorn” the
 same products and infringement theories into a new case. This the law plainly precludes.

PI can meet those standards). Having failed to meet the basic pleading requirements, PI's First and Second Causes of Action should be dismissed.

II. FACTUAL BACKGROUND

PI filed a prior litigation against Fairchild on November 4, 2009, alleging infringement of the '079 patent among other patents. *Fairchild IV*, Dkt. 1. In that case, PI served four rounds of infringement contentions: initial infringement contentions on March 22, 2010; first supplemental infringement contentions on July 16, 2010; second supplemental infringement contentions on February 22, 2012; and third supplemental infringement contentions on November 16, 2012. *Fairchild IV*, Dkt. 248 at 2:20-23; *Fairchild IV*, Dkt. 251, Ex. 18. In its contentions, PI generally referred to the accused products as "power supply controller products that include what Defendants characterize as 'Green-Mode' functionality, or other substantially similar functionality" as infringing claims of the '079 patent. *Fairchild IV*, Dkt. 248 at 3:2-10; *Fairchild IV*, Dkt. 251, Ex. 18. PI's infringement contentions failed to identify the FAN301UL, FAN301HL, FAN501, or SMC0517MX products even though these products were released as early as 2010.

Thereafter, on July 19, 2013, PI served its expert report on infringement signed by Dr. Arthur W. Kelley. Dr. Kelley's report included infringement contentions for the FAN301UL, FAN301HL, FAN501, and SMC0517MX for the '079 patent without PI seeking leave to amend its infringement contentions. *Fairchild IV*, Dkt. 248 at 3:19-27; *Fairchild IV*, Dkt. 251, Ex. 5.

On September 27, 2013, Fairchild filed a motion to strike PI's infringement allegations for the FAN301UL, FAN301HL, FAN501, and SMC0517MX products for failing to timely disclose them under Patent Local Rule 3-1. *Fairchild IV*, Dkt. 248. In opposition to Fairchild's motion, PI stated that "all of the accused products [in PI's infringement contentions], including the identified FAN301, FAN302HL and FAN302UL, share the same Accused Instrumentality, and the contentions provide a complete analysis of the representative product." *Fairchild IV*, Dkt. 276 at 8:5-6. PI stated that the identified Fairchild product SG5841J was representative of the FAN301UL, FAN301HL, FAN501, or SMC0517MX products as they all share the same relevant accused circuitry. *Fairchild IV*, Dkt. 276. PI further stated that any differences between the

1 SG5841J product and the FAN301UL, FAN301HL, FAN501, or SMC0517MX products were
 2 “purely semantic.” *Fairchild IV*, Dkt. 276 at 9:5. Additionally, PI stated that the “‘VS’ pin in
 3 FAN301 and FAN302 series products performs the same frequency variation function using the
 4 same type of internal circuitry as the representative SG5841J, and thus is not materially different
 5 from the representative SG5841J with its ‘FB’ pin” and that the Green Mode circuit blocks in the
 6 FAN301UL, FAN301HL, FAN501, or SMC0517MX products were “substantially the same
 7 circuitry and infringe for the same reasons as the SG5841J.” *Fairchild IV*, Dkt. 276 at 9:18-19.
 8 Furthermore, PI again stated that the FAN501 and SMC0517MX “are essentially the same as the
 9 FAN302HL/UL products” of which the SG5841J is representative. *Fairchild IV*, Dkt. 276 at
 10 9:26-27.

11 At the hearing on Fairchild’s motion to strike, the Court stated, “it seemed to me that they
 12 knew about them early enough to move to amend and add them to the infringement contentions or
 13 claim chart. Dr. Kelley’s report, which is dated, I believe, July this year, had accused all four, so
 14 everyone knew by then. And, in fact, I think Power Integrations got schematics at least for some
 15 of those by June 19.” *Fairchild IV*, Dkt. 352 (11/21/2013 Hearing Tr.) at 38:22-39:3. The Court
 16 also noted that “[i]f that is the case and I accept that, then this is a new item that could have been
 17 amended to be added earlier and probably should have been if one were going to be timely.”
 18 *Fairchild IV*, Dkt. 352 (11/21/2013 Hearing Tr.) at 45:13-15.

19 On November 26, 2013, the Court struck PI’s infringement contentions relating to the
 20 FAN301UL, FAN301HL, FAN501, and SMC0517MX products as untimely under Patent Local
 21 Rule 3-1. Specifically, the Court held:

22 *For the reasons discussed on the record at the hearing*, the Court
 23 finds *Power Integrations was aware of its infringement*
 24 *contentions as to the four newly disclosed Burst-Green Mode*
 25 *[FAN301UL, FAN301HL, FAN501, and SMC0517MX] products*
 26 *at a point in the litigation at which its [sic] could have filed a*
 27 *timely motion to amend but did not do so at that time or at any*
 28 *time thereafter. See Patent L.R. 3-1(b) (requiring “[e]ach product,*
device, and apparatus” to be “identified by name or model number,
if known”); Patent L.R. 3-6 (allowing amendment “upon a timely
showing of good cause,” including “[r]ecent discovery of
nonpublic information”). With respect to the VS pin and the DET
pin, Power Integrations has not met its burden of showing said
pins, and infringement theories based thereon, are effectively

disclosed by other information included in its infringement contentions. See Patent L.R. 3-1(c) (requiring “chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality”).

Fairchild IV, Dkt. 346 at 1:26-2:9 (emphasis added). In February 2014, PI proceeded to trial without the FAN301UL, FAN301HL, FAN501, and SMC0517MX products.

On June 11, 2015, PI’s technical expert, Dr. Kelley served an expert report for the damages retrial in *Fairchild IV* attempting to reaffirm the excluded opinions. Specifically, Dr. Kelley stated “I reiterate my opinion that the products developed for Apple/Samsung cell phone chargers, including the FAN302HL/UL, FAN301HL/UL and the SMC0517MX and FAN501 all infringe the ’079 patent for the reasons set forth in my original report. That opinion would extend to any products with similar circuitry for frequency reduction.” *Fairchild IV*, Dkt. 709, Ex. A at ¶ 66. PI has thus at all times maintained the exact same infringement theory for these products in both *Fairchild IV* and *Fairchild VI*.

On October 21, 2015, PI filed the Original Complaint in this case (“*Fairchild VI*”), which again asserts the ’079 patent against Fairchild in addition to U.S. Patent No. 6,249,876 (hereinafter referred to as “the ’876 patent”). Dkt. 1. On February 25, 2016, PI filed its Amended Complaint.³ Dkt. 30. By its own admission in the Amended Complaint, every product identified in the *Fairchild VI* Complaint is the same or substantially the same as the products excluded by the Court’s Order in *Fairchild IV* striking PI’s untimely infringement contentions. Thus, PI’s allegation of infringement of the ’079 patent in *Fairchild VI* is an improper attempt to avoid this Court’s Order in *Fairchild IV*.

PI’s Amended Complaint in this case also alleges, with no factual support, that Fairchild directly and willfully infringes the ’079 and ’876 patents, as well as induces and/or contributes to other’s infringement of the asserted patents.

³ PI added additional products to the Amended Complaint. Nowhere does PI allege that it was unaware of these products during *Fairchild IV*, nor could it, because PI possessed information about many if not all of these products. Nevertheless, as alleged by PI, the products contain the same allegedly infringing technology.

1 III. LEGAL STANDARD

2 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings. A
 3 court should dismiss a complaint where it fails to contain “enough facts to state a claim to relief
 4 that is plausible on its face.” *Twombly*, 550 U.S. at 570; *see also Iqbal*, 556 U.S. at 678. In
 5 ruling on a 12(b)(6) motion to dismiss, a court may consider facts subject to judicial notice, such
 6 as matters of public record and prior court proceedings. *Mack v. Kuckenmeister*, 619 F.3d 1010,
 7 1014 n.1 (9th Cir. 2010); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). Therefore, this
 8 Court may properly take judicial notice of PI’s representations made in its papers filed in
 9 *Fairchild IV*, including PI’s representations that it is presenting the same infringement theory for
 10 the products in this case as the products at issue in *Fairchild IV*.

11 In ruling on a 12(b)(6) motion, a court need not, however, credit bald assertions or legal
 12 conclusions. *See Moss v. U.S. Secret Service*, 572 F.3d 962, 970-72 (9th Cir. 2009) (granting
 13 motion to dismiss when the complaint contained facts rendering the allegations possible but not
 14 plausible). “Nor does a complaint suffice if it tenders naked assertions devoid of further factual
 15 enhancement.” *Iqbal*, 556 U.S. at 678. Wholly conclusory claims cannot survive a challenge
 16 under Rule 12(b)(6) because the “non-conclusory ‘factual content,’ and reasonable inferences
 17 from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss*,
 18 572 F.3d at 969. In the context of a Rule 12(b)(6) motion, “threadbare recitals of the elements of
 19 a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at
 20 663-64 (finding that allegations of complaint amounted to “nothing more than a ‘formulaic
 21 recitation of the elements’ of” the asserted claim and thus were “not entitled to be assumed true”)
 22 (quoting *Twombly*, 550 U.S. at 555-56); *see also Superior Indus., LLC v. Thor Global Enters.*
 23 *Ltd.*, 700 F.3d 1287, 1295-96 (Fed. Cir. 2012) (“[T]he pleading requirements set forth in
 24 *Twombly* and *Iqbal* apply to...claims [of indirect infringement].”) (internal citations omitted);
 25 *FuzzySharp Techs. Inc. v. Nvidia Corp.*, 2013 WL 4766877, *2 (N.D. Cal. Sep. 4, 2013) (“claims
 26 for willful infringement are governed by the standards in *Iqbal* and *Twombly*”).

27 Legal conclusions may “provide the framework of a complaint,” but they “must be
 28 supported by factual allegations.” *Iqbal*, 556 U.S. at 679. The Court must dismiss claims totally

devoid of factual allegations because they do not “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555-56.⁴

IV. ARGUMENT

A. PI’s Allegations of Infringement of the ’079 Patent Are an Impermissible Collateral Attack on This Court’s Ruling in *Fairchild IV*

PI’s allegations of infringement of the ’079 patent constitute an improper collateral attack on the Court’s prior Order excluding these same products in *Fairchild IV*. On November 26, 2013, the Court struck PI’s untimely infringement allegations for certain products being accused of infringement once again in this case because PI failed to comply with Patent Local Rule 3-1.⁵ PI’s ’079 patent infringement allegations in this litigation circumvent this Court’s Order by attempting to re-litigate infringement claims previously struck by this Court. This collateral attack is impermissible as a matter of law.

It is black letter law that a party cannot file a new lawsuit to effectively negate an existing Court order. *Icon-IP PTY Ltd. v. Specialized Bicycle Components, Inc.*, 2013 WL 10448869, at *2 (N.D. Cal. Oct. 22, 2013); *Glitsch, Inc. v. Koch Eng’g Co., Inc.*, 216 F.3d 1382, 1384 (Fed. Cir. 2000) (“Glitsch was not entitled to use a declaratory judgment action to collaterally attack the district court’s order in the first action denying Glitsch’s motion to amend its answer). Courts further recognize that the proper course of action for a losing party is to appeal the underlying ruling, not to file a new action. For example, in *Glitsch*, the Federal Circuit affirmed a district court’s dismissal of a second case brought by a defendant in a patent infringement action

⁴ The Amended Complaint must comply with the amendments to the Federal Rules of Civil Procedure that took effect on December 1, 2015, including the abrogation of Rule 84 that stated “the forms in the Appendix suffice under these rules.” As a result, bare-bones patent complaints under Form 18 are insufficient and direct infringement allegations must comply with the Supreme Court’s *Iqbal* and *Twombly* precedents.

⁵ PI’s Original Complaint alleged infringement with regard to four Fairchild products excluded by this Court in *Fairchild IV*. Recognizing this fatal mistake, PI’s Amended Complaint adds contentions against 14 additional products. This amendment, however, fails to save PI from claim splitting or claim preclusion, as the newly accused devices are “essentially the same” as the prior products with regard to PI’s infringement contentions. *Foster v. Hallco Mfg. Co.*, 947 F.2d 469, 480 (Fed. Cir. 1981) (announcing the “essentially the same standard” and remanding to district court for claim preclusion analysis where new version of product was produced years after initial action concluded).

1 to present the same claims that were disallowed in the first action. 216 F.3d at 1384. The Federal
2 Circuit held:

3 Glitsch unsuccessfully sought to raise its defense in the first action,
4 and it now contends that it may raise the same legal claim in the
5 second action because the district court was wrong when it barred
6 Glitsch from raising that claim as a defense in the first case. There
7 is, however, a strong and sensible policy against such a tactic.
8 When a court enters an order that a party does not like, the party's
 recourse is to seek relief on appeal; it is not appropriate for the
 party to contest the court's order by filing a new action seeking a
 declaratory judgment challenging the court's ruling in the first
 case.

9 *Id.* PI's allegations of infringement of the '079 patent in this case, like the defendant in *Glitsch*,
10 are an improper collateral attack on the Court's Order in *Fairchild IV*.

11 PI's claims in this new lawsuit are deficient for reasons similar to the rationale supplied in
12 *Icon II*, where the court dismissed a second lawsuit as being an improper collateral attack on the
13 court's prior ruling excluding products untimely injected into that case. In *Icon I*, a plaintiff
14 sought to add 49 models to its infringement contentions nearly a year after the filing of its
15 complaint. 2013 WL 10448869, at *1. The district court barred the additional products from
16 being added, finding that Icon possessed information about the infringing features of the 49
17 models prior to the deadline for serving its infringement contentions and that it could have
18 discovered additional information. *Id.* at 4. The district court in *Icon II* granted a motion to
19 dismiss, finding that a separate lawsuit would result in consolidation of the two actions,
20 undermining the Court's earlier order excluding the products at issue. *Id.* at *4.

21 PI's allegations in this case similarly amount to an improper collateral attack on the
22 Court's prior ruling. PI's allegations are more egregious, however, as PI did not even seek leave
23 to amend its contentions in *Fairchild IV*. Instead, PI attempted to shoehorn these untimely
24 allegations into its expert's report without seeking leave to amend. PI knew of the products
25 accused in this case at a time when they could have, and should have, amended their infringement
26 contentions in *Fairchild IV*. *Fairchild IV*, Dkt. 352 (11/21/2013 Hearing Tr.) at 38:22-39:3. The
27 additional products that PI attempts to introduce through its Amended Complaint do not change
28 the analysis, as PI alleges in the Amended Complaint that the infringing technology in the new

1 products “is the same as or substantially similar to the corresponding circuitry in the controller
 2 chips previously found to infringe....” Dkt. 30 at ¶ 23. As this Court held in its Order excluding
 3 these products in *Fairchild IV*, “the Court finds *Power Integrations was aware of its*
 4 *infringement contentions as to the four newly disclosed Burst-Green Mode* [FAN301UL,
 5 FAN301HL, FAN501, and SMC0517MX] *products at a point in the litigation at which its [sic]*
 6 *could have filed a timely motion to amend but did not do so at that time or at any time*
 7 *thereafter.*” *Fairchild IV*, Dkt. 346 at 1:26-2:9 (emphasis added).

8 PI’s prior knowledge of the accused functionality aligns this case with the holding of *Icon*
 9 *II* and equity thus requires the Court to dismiss the ’079 patent from this new lawsuit. *See Adobe*
 10 *Sys. Inc. v. Wowza Media Sys., LLC*, 72 F.Supp.3d 989, 993 (N.D. Cal. 2014). The *Adobe* case is
 11 instructive. There, Judge Tigar denied a motion to dismiss based on collateral attack grounds in a
 12 situation where the order in the first case “*never found that Adobe had notice of Wowza’s alleged*
 13 *infringement*” at the time infringement contentions were served. *Id.* At the same time, however,
 14 the Court acknowledged that equities favor dismissal where a party, like PI here, possessed
 15 information used in second lawsuit at the time of the circumvented order in first lawsuit. *Id.*
 16 Judge Tigar’s rationale in *Adobe* thus further supports granting Fairchild’s motion to dismiss
 17 here.

18 While PI may disagree with the Court’s Order excluding these products, its proper
 19 recourse is to appeal that decision—not to file a new lawsuit. *Icon*, 2013 WL 10448869, at *2;
 20 *Glitsch, Inc.*, 216 F.3d at 1384. If PI required immediate relief from the Court’s Order, then PI
 21 should have moved for reconsideration or sought an immediate appeal. PI’s failure to follow a
 22 proper procedural recourse does not somehow insulate its claims in the Amended Complaint. As
 23 a result, PI’s allegations regarding the ’079 Patent should be dismissed.

24 **B. PI’s Allegations of Infringement of the ’079 Patent Are Barred By the**
 25 **Prohibition on Claim Splitting**

26 PI is separately precluded from raising its claim of infringement of the ’079 patent in this
 27 new case under the claim splitting doctrine. The claim splitting doctrine is a subspecies of claim
 28 preclusion that bars a second action where: ‘(1) the same parties, or their privies, were involved in

1 the prior litigation, (2) the prior litigation involved the same claim or cause of action as the later
2 suit, and (3) the prior litigation was terminated by a final judgment on the merits.” *Central Delta*
3 *Water Agency v. United States*, 306 F.3d 938, 952 (9th Cir. 2002)).

4 Here, the first and third prongs of preclusion under claim splitting are clearly met. The
5 first prong is met, as the parties in this case are identical to the parties in *Fairchild IV*. The third
6 prong is also met, as “what is required in the context of a claim splitting analysis is to *assume* that
7 the first suit was final, and then determine if the second suit could be precluded.” *Single Chip*
8 *Sys. Corp. v. Intermec IP Corp*, 495 F. Supp. 2d 1052, 59 (S.D. Cal 2007) (emphasis in original).
9 Here, the ’079 patent was previously asserted in *Fairchild IV*, and that litigation resulted in a final
10 jury verdict. As such, there can be no dispute that the first and third prongs of the claim splitting
11 analysis are met.

12 The second prong of the claim splitting analysis is met by PI’s repeated allegations in the
13 Amended Complaint that the infringing technology in *all of the accused Fairchild products*
14 contain the “same or substantially similar” circuitry as the infringing products previously found to
15 infringe the ’079 patent in *Fairchild IV*. *See, e.g.* Dkt. 30 at ¶ 23. The Federal Circuit addressed
16 this very issue in *Nystrom v. Trex Company*, ultimately holding that newer versions of previously
17 accused devices are “essentially the same” and cannot be challenged for infringement in a
18 subsequent action if they are materially unchanged with respect to the plaintiff’s infringement
19 contentions. 580 F.3d 1281, 1285 (Fed. Cir. 2009) (citing *Foster*, 947 F.2d at 480). “Accused
20 devices are ‘essentially the same’ where the differences between them are merely ‘colorable’ or
21 ‘unrelated to the limitations in the claim of the patent.’” *Acumed LLC v. Stryker Corp.*,
22 525 F.3d 1319, 1324 (Fed. Cir. 2008) (citing *Foster*, 947 F.2d at 480). Under this standard,
23 differences between products do not prevent them from being “essentially the same” unless the
24 differences are pertinent to infringement. Here, the “essentially the same” standard is met by PI’s
25 own repeated representations in *Fairchild IV* and in the Amended Complaint of this case that the
26 products it seeks to accuse of infringement here are “the same” and that any differences are
27 “purely semantic.” *Fairchild IV*, Dkt. 276 at 9:5. Based on PI’s repeated assertions that the
28 products at issue in this case have substantially the same infringing technology as the technology

1 found to infringe in *Fairchild IV*, the second prong of the claim splitting analysis laid out in
 2 *Nystrom* is clearly met.⁶

3 The law is clear that Fairchild's statements concerning the dissimilarity of the products
 4 have no bearing on a claim splitting determination, as PI's clear allegations in the Amended
 5 Complaint are dispositive. As *Nystrom* and its progeny make clear, PI's contentions in this suit
 6 cannot be saved by Fairchild's belief that these products do not infringe the '079 patent or that
 7 PI's timely infringement contentions in *Fairchild IV* failed to provide adequate support for its
 8 allegations of infringement. Instead, PI is bound by its previous assertions that the products at
 9 issue in this case are "identical" or the "same" under claim preclusion. *Nystrom*, 580 F.3d at
 10 1286; *see also Icon*, 2013 WL 10448869, at *4 ("That [defendant] Specialized previously argued
 11 that the models at issue are from different product families than the original models does not
 12 affect this conclusion, because a product need not be from the same product family to meet the
 13 'essentially the same' standard."); *Hako-Med USA, Inc. v. Axiom Worldwide, Inc.*, 2010 WL
 14 4448824, at *4 (D. Haw. Oct. 29, 2010) (dismissing second suit as barred by res judicata where
 15 the patentee's own assertions established that the accused product in the second suit was
 16 essentially the same as the accused product in a first suit). Therefore, the doctrine of claim
 17 splitting bars PI's allegations of infringement in this case.

18 "It is well established that a party may not split a cause of action into separate grounds of
 19 recovery and raise the separate grounds in successive lawsuits; instead, a party must raise in a
 20 single lawsuit all the grounds of recovery arising from a single transaction or series of
 21 transactions that can be brought together." *Mars Inc. v. Nippon Conlux Kabushiki-Kaisha*, 58
 22 F.3d 616, 619 (Fed. Cir. 1995); *see also Adams v. California Dept. of Health Servs.*, 487 F.3d
 23 684, 688 (9th Cir. 2007) (applying claim splitting doctrine to affirm dismissal with prejudice of a

24
 25 ⁶ Additionally, the generic language of PI's Amended Complaint further shows that claim
 26 preclusion (*i.e.*, res judicata) applies to bar PI's First Cause of Action. PI alleges that ***not only*** the
 27 specific products named in the Amended Complaint infringe the '079 patent, ***but also that*** "all
 28 products within the same or similar product families, and all product families having the same or
 substantially similar infringing functionalities..." infringe. Dkt. 30 at ¶ 19. Given this broad
 language and PI's repeated accusations that the products in this second lawsuit are the same to the
 products in the first lawsuit, this case necessarily involves technology tried to a jury in the first
 lawsuit. Claim preclusion thus bars PI's '079 patent infringement allegations.

1 second action that the plaintiff filed “in an attempt to avoid the consequences of her own delay
2 and to circumvent the district court’s denial of her untimely motion for leave to amend her first
3 complaint”). “The main purpose behind the rule preventing claim splitting is to protect the
4 defendant from being harassed by repetitive actions based on the same claim.” *Single Chip*, 495
5 F. Supp. 2d at 1058.

6 Allowing PI to proceed with these allegations of infringement in this case would only
7 serve to “contravene the preclusion principles discussed above and would undermine the spirit
8 and purpose of the Patent Local Rules.” *Icon*, 2013 WL 10448869, at *4. Any alleged prejudice
9 to PI is the “direct result of its own lack of diligence.” *Id.* PI’s allegations of discovery abuse
10 were already raised in opposition to Fairchild’s motion to exclude in *Fairchild IV* and were
11 rejected, as Fairchild produced all requested documents and “Power Integrations was aware of its
12 infringement contentions as to the four newly disclosed Burst-Green Mode [FAN301UL,
13 FAN301HL, FAN501, and SMC0517MX] products at a point in the litigation at which its [sic]
14 could have filed a timely motion to amend but did not do so at that time or at any time thereafter.”
15 *Fairchild IV*, Dkt. 346 at 1:26-2:9. As such, PI cannot claim that discovery delays in *Fairchild IV*
16 permit the infringement claim in this lawsuit. *See Icon*, 2013 WL 10448869, at *4 (“[T]hat
17 Specialized did not produce discovery in *Icon I* pertaining to the models at issue also is
18 irrelevant” when accused infringer objected to producing discovery in *Icon I*). In short, PI was
19 aware of these products at a time in *Fairchild IV* when it could have sought leave to amend its
20 infringement contentions, but failed to do so. *Fairchild IV*, Dkt. 346 at 1:26-2:9. PI is thus
21 barred from reasserting its recycled claim of infringement in this case.

22 Finally, PI’s infringement allegations in this case cannot be saved by any alleged “new
23 transactions” involving the accused products that may have occurred after the Court’s ruling in
24 *Fairchild IV*. Specifically, PI possesses no new rights at issue in this case that were not
25 adjudicated in *Fairchild IV*. Indeed, PI has not suggested that any of the green mode
26 functionality accused in this case is substantially different from the technology accused in
27 *Fairchild IV*. This distinguishes the situation here from *Aspex Eyewear, Inc. v. Marchon*
28 *Eyewear, Inc.*, 672 F.3d 1335 (Fed. Cir. 2012), where the Federal Circuit authorized a follow-on

1 suit based on “new acts of infringement.” *Id.* at 1342. Magistrate Judge Grewal explained this
 2 distinction clearly in *Adaptix, Inc. v. Amazon.com, Inc.*, noting that “[t]hose patent property
 3 rights—even in the face of new acts of infringement—do not change.” 2015 WL 4999944, at *8
 4 (N.D. Cal. Aug. 21, 2015). *Adaptix* explained in clear terms that the *Aspex Eyewear* case had not
 5 changed the established law of *Nystrom*. Indeed, Magistrate Judge Grewal there issued an order
 6 barring claims against newer versions of products that were “essentially the same” as products
 7 previously barred, explaining that “[t]his is **exactly** what the doctrine of claim preclusion seeks to
 8 **prohibit**.” *Id.* (emphasis added). The same logic applies here and the Court should dismiss PI’s
 9 ’079 patent infringement claim in this case as improper claim splitting.⁷

10 C. PI’s Amended Complaint Fails to State a Claim for Direct Infringement

11 PI’s Amended Complaint fails to allege facts sufficient to support a claim for direct
 12 infringement of either the ’079 or the ’876 patents, mandating that these allegations be struck.

13 To support a claim for direct infringement, PI must plead facts sufficient to show that
 14 Fairchild’s accused products directly infringe the claims of the asserted patents. *Addiction &*
 15 *Detoxification Institute LLC v. Carpenter*, 620 F. App’x 934, 937-38 (Fed. Cir. 2015)
 16 (nonprecedential); *PageMelding, Inc. v. ESPN, Inc.*, 2012 WL 1534844, at *2-*3 (N.D. Cal. Apr.
 17 30, 2012). PI’s Amended Complaint fails to state which features of Fairchild’s accused products
 18 are alleged to infringe each of the claim limitations. Instead, PI’s Amended Complaint merely
 19 states that the “green mode” and “frequency hopping” features are “covered by” the ’079 and
 20 ’876 patent claims. Dkt. 30 at ¶¶ 20, 33. However, PI is required to provide **facts** that support
 21 **how** the accused products infringe PI’s ’079 and ’876 patents. *PageMelding*, 2012 WL 1534844,
 22 at *2-*3 (“Just because defendant creates an end product similar to that created by plaintiff’s
 23 patent does not give rise to a reasonable inference of infringement. Plaintiff’s pleading approach

24 ⁷ There is no support in the law for any argument that improper claim preclusion only applies to
 25 situations involving **defeated** plaintiffs trying to bring a second action. *Transclean Corp. v. Jiffy*
 26 *Lube Int’l, Inc.*, 474 F.3d 1298, 1307 (Fed. Cir. 2007) (holding claim preclusion barred previously
 27 prevailing patentee from asserting “use” infringement claims in second case against customers of
 28 previously adjudged infringing manufacturer); *Gary Fong, Inc. v. Halton*, 158 F. Supp. 2d 1012,
 1014-16 (N.D. Cal. 2011). While it is true that the Federal Circuit has permitted prevailing
 patentees to file new allegations of infringement, this has only been authorized in circumstances
 where the newly accused products did not include technology that was “essentially the same” as
 previously adjudicated products. *Foster*, 947 F.2d at 480.

1 still smacks too much of ‘shoot first and ask questions later.’”) Additionally, Fairchild’s
 2 manufacturing of controller chips cannot directly infringe the claims in the ’079 and ’876 patents,
 3 as these claims require a *power supply with a switch or transformer*. Dkt. 30, Ex. B and Ex. C.
 4 PI offers no factual support for its bare allegations that Fairchild “offer for sale, import into,
 5 and/or sell in the United States, complete power supply devices, including ‘demonstration
 6 boards,’ that contain an infringing power supply controller chip in combination with a power
 7 switch in accordance with the claims of the ’079 patent.” Dkt. 30 at ¶ 20. And in any event, no
 8 such instances are identified with any level of particularity. As such, PI’s Amended Complaint
 9 fails to identify sufficient facts to put Fairchild on notice as to what activity is alleged to directly
 10 infringe the specific asserted claim limitations and must be dismissed.

11 **D. PI’s Amended Complaint Fails to State a Claim for Willful Infringement**

12 PI’s Amended Complaint fails to allege facts sufficient to support a claim for willful
 13 infringement, mandating that these allegations be struck.

14 To support a claim for willful infringement, PI must plead facts plausibly showing that:
 15 (1) Fairchild had pre-suit knowledge of the asserted patents; (2) Fairchild “acted despite an
 16 objectively high likelihood that its actions constituted infringement of a valid patent”; and (3) the
 17 risk was “known or so obvious that it should have been known” to Fairchild. *In re Seagate Tech.,*
 18 *LLC*, 497 F.3d 1360, 1371, 1374 (Fed. Cir. 2007). Courts dismiss willful infringement
 19 allegations that lack facts showing that an accused infringer acted despite an “objectively high
 20 likelihood” of infringing a valid patent. *Seagate*, 497 F.3d at 1371; *see also Bascom Research*
 21 *LLC v. Facebook, Inc.*, 2013 WL 968210, at *6 (N.D. Cal. Mar. 12, 2013) (dismissing willful
 22 infringement claim because “the complaint does not allege any facts that could give rise to an
 23 inference that [the defendant] knew or should have known it was acting despite an objectively
 24 high likelihood of infringement”); *Logic Devices, Inc. v. Apple, Inc.*, 2014 WL 60056, at *3 (N.D.
 25 Cal. Jan. 7, 2014) (explaining that the defendant’s “bald complaint” was “devoid” of an allegation
 26 that the plaintiff knew or should have known of an “objectively high risk of infringing a valid
 27 patent”).
 28

1 Here, PI's allegations of willful infringement must be dismissed as the Amended
2 Complaint does not provide any facts to support an allegation that Fairchild acted despite an
3 "objectively high likelihood" of infringing a valid patent. Instead, PI's Amended Complaint
4 makes general references to unrelated prior litigations that fail to provide any factual support for
5 an allegation of willfulness *in this case*. Specifically, PI's Amended Complaint references prior
6 litigations that: (1) involve other patents; (2) did not involve the products asserted here; and (3)
7 found Fairchild's litigation defenses objectively reasonable, thus negating any potential finding of
8 willful infringement. Furthermore, PI's Amended Complaint fails to acknowledge relevant facts
9 which preclude willfulness from applying in this case as a matter of law. For example, PI's
10 Amended Complaint fails to state that claims of the '876 patent are currently finally rejected in a
11 reexamination initiated by Fairchild at the U.S. Patent and Trademark Office, proving that
12 Fairchild had, and continues to have, an objectionably reasonable belief it did not infringe. *See*
13 *generally Power Integrations v. Lee*, 797 F.3d 1318 (Fed. Cir. 2015).

14 In addition, PI fails to allege facts to show that the risk of infringing a valid patent was
15 "either known or so obvious that it should have been known" to Fairchild. *Seagate*, 497 F.3d at
16 1371; *Bascom*, 2013 WL 968210, at *6; *MyMedicalRecords, Inc. v. Jardogs, LLC*, 2014 WL
17 32157, at *3 (C.D. Cal. Jan. 6, 2014) (explaining that the plaintiff failed to allege facts showing
18 that "the risk was known or so obvious that it should have been known to" the defendant)
19 (internal quotations omitted). Indeed, PI's Amended Complaint fails to identify any supporting
20 facts that could support an allegation that the risk of infringing a valid patent was "either known
21 or so obvious that it should have been known" to Fairchild. Instead, PI's Amended Complaint
22 relies on attorney argument and activity from unrelated prior litigations that cannot support a
23 claim for willful infringement in this case. Furthermore, PI's Amended Complaint fails to state
24 any time period for its willful infringement claim. In addition, PI's unsupported attorney
25 argument that "the accused controller chips is the same as or substantially similar to the
26 corresponding circuitry in the controller chips previously found to infringe and that such circuitry
27 was not the result of a good faith effort to design around" cannot support a claim for willful
28

1 infringement, nor does it constitute a new cause of action for infringement. *Adaptix*, 2015 WL
2 4999944, at *8.

3 Moreover, as PI has failed to request a preliminary injunction, it cannot allege post-suit
4 willful infringement from a prior litigation as support of willful infringement in this case.
5 “*Seagate* is crystal clear that a patentee who does not move for a preliminary injunction ‘should
6 not be allowed to accrue enhanced damages based solely on’ such post-filing acts.” *CAP Co.,
7 Ltd. v. McAfee, Inc.*, 2015 WL 3945875, at *5 (N.D. Cal. June 26, 2015) (dismissing willful
8 infringement allegations for failing to move for preliminary injunction).

9 Because PI’s Amended Complaint fails to meet at least two of the prongs required to
10 support a willfulness claim, PI’s claim for willful infringement should be dismissed.

11 **E. PI’s Amended Complaint Fails to State a Claim for Indirect Infringement**

12 PI’s Amended Complaint contains only vague allegations of induced and contributory
13 infringement, while the law requires facts showing specific intent. As a result, the Amended
14 Complaint falls far short of the pleading requirements set forth in *Twombly* and *Iqbal*. While the
15 Amended Complaint attempts to mention some of the legalese relating to inducement and
16 contributory infringement, it fails to provide any factual basis whatsoever for establishing that
17 those claims are plausible. Such bare bones allegations fail to state a claim relief and should be
18 dismissed.

19 **1. PI’s Amended Complaint Fails to State a Claim for Induced 20 Infringement**

21 To survive a motion to dismiss on induced infringement under 35 U.S.C. § 271(b), PI
22 must plead facts plausibly showing: (1) direct infringement by a third party ; (2) that Fairchild
23 “specifically intended [its] customers to infringe the asserted patent”; and (3) that Fairchild “knew
24 that the customer’s acts constituted infringement.” *Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*,
25 2012 WL 1030031, at *4 (N.D. Cal. Mar. 22, 2012) (“To sufficiently plead a claim for induced
26 infringement, a patentee must allege facts to support each element.”); *see also Logic Devices*,
27
28

2014 WL 60056, at *1 (citing *In re Bill of Lading Transmission & Processing Sys. Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir. 2012)). PI's allegations fail to satisfy any of these elements.

First, PI fails to specifically identify any direct infringer (distributor or customer) of the product made, used, sold, sold, offered for sale in the United States or imported in the United States by that distributor or customer. PI's identification of unnamed direct infringers and their unidentified product offerings fails to state a rudimentary claim for inducement, fails to provide any basis whatsoever for believing that those claims are plausible as the product must enter the United States for infringement to occur, and cannot sustain a claim for inducement. *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1371-72 (Fed. Cir. 2013); *Crystal Semiconductor Corp. v. TriTech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1351 (Fed. Cir. 2001) ("Inducement only occurs if the party being induced directly infringes the patent.").

Second, PI fails to plead facts plausibly showing Fairchild had the specific intent to induce infringement of the '079 and '876 patents. Instead, PI's Amended Complaint merely includes a bare, boilerplate recitation that Fairchild's everyday product promotional practices and standard business indemnification terms (offered by all companies and implied in the law) somehow induces customers and distributors to infringe and that "those actions are undertaken with the specific intent that they will, in fact, induce direct infringement and with full knowledge that Defendants' products infringe one or more claims of the '079 patent [and '876 patent] both literally and under the doctrine of equivalents." Dkt. 30 at ¶¶ 22, 35. Because the Amended Complaint does not plead any facts that could reasonably show that Fairchild had the "specific intent" to induce the allegedly infringing acts by its customers or others, PI's claim for induced infringement should be dismissed. *See Fortinet, Inc. v. FireEye, Inc.*, 2014 WL 4955087, at *4-5 (N.D. Cal. Sept. 30, 2014) (dismissing inducement claim based on "bare allegations" that "Defendant's products sold directly to consumers and through its distribution partners are designed to be used (and are used by consumers and end users) in an infringing manner"); *see also MEMC Elec. Materials, Inc. v. Mitsubishi Materials Silicon Corp.*, 420 F.3d 1369, 1378-79 (Fed. Cir. 2005) (finding general indemnification agreements do not constitute inducement, unless the plaintiff shows that "the primary purpose of the agreement was to induce" the

indemnified party to infringe the asserted patents but PI pled no such purpose here); *Avocet*, 2012 WL 1030031, at *4 (dismissing induced infringement claim because “Plaintiff has not alleged any facts to suggest that Defendants...had the specific intent to induce infringement”); *Fujitsu Ltd. v. Belkin Int’l, Inc.*, 782 F. Supp. 2d 868, 892-93 (N.D. Cal. 2011) (granting motion to dismiss induced infringement claim for failure to allege facts pertaining to specific intent). PI is required to plead facts in its Amended Complaint sufficient to show Fairchild possessed the specific intent to induce infringement, such as specific examples of advertising the benefits of these products in the United States, or specific statements made by Fairchild demonstrating an intent to induce infringement of the asserted patents in the United States. *CAP*, 2015 WL 3945875, at *5 (dismissing inducement allegations as “woefully inadequate intent allegations” which “require dismissal of the inducement claim”). Given PI’s woefully inadequate allegations, and the total lack of connection between any activity and a resulting instance of direct infringement, the Court should dismiss PI’s inducement claims.

Third, PI’s Amended Complaint fails to plead any facts to plausibly show Fairchild knew that the acts of unnamed “distributors and customers” constituted infringement. *See* Dkt. 30 at ¶¶ 22, 35. PI’s inducement claims should be dismissed for this reason as well. *See Logic Devices*, 2014 WL 60056, at *2 (dismissing inducement claim where allegations “fail[ed] to support an inference of specific intent to induce infringement and knowledge that the induced actions constituted infringement”); *Superior Indus.*, 700 F.3d at 1296 (holding that the complaint failed to “allege any facts to support a reasonable inference that [the defendant] specifically intended to induce infringement of the [patent-in-suit] or that it knew it had induced acts that constitute infringement”). PI’s Amended Complaint contains no facts describing what acts defendants allegedly induced, what defendants knew about those acts, or the identity of the “distributors and customers” accused of directly infringing PI’s patents. PI’s Amended Complaint is absolutely devoid of any mention of a specific third party that allegedly manufactures, sells, uses or offers for sale any of the accused products in an infringing manner. As Fairchild manufactures and sells products outside the United States, PI’s Amended Complaint must allege facts demonstrating that Fairchild has the requisite knowledge to induce its foreign

1 customers to infringe within the United States. *Global-Tech. Appliances, Inc. v. SEB SA*, 131 S.
 2 Ct. 2060, 2068 (2011). PI's Amended Complaint includes no such allegations. Instead, PI's
 3 Amended Complaint only vaguely states Fairchild "know[s] and intend[s] that at least some of
 4 the controller chips [it] sell[s] overseas will be imported into the United States by [its] customers
 5 in complete power supplies covered by the claims of the '079 patent, and know[s] and intend[s]
 6 that the controller chips sold directly into the U.S. and through [Fairchild's] U.S. distributors will
 7 be used in the U.S. in power converters that include a power switch." Dkt. 30 at ¶¶ 22, 35. At
 8 best, PI has pled "mere knowledge of possible infringement by others [but that] does not amount
 9 to inducement; specific intent and action to induce infringement" are required particularly where,
 10 as here, the Amended Complaint admits that the accused controller chips have non-infringing
 11 uses (if incorporated into products sold outside United States). *Takeda Pharm. U.S.A., Inc. v.*
 12 *West-Ward Pharm. Corp.*, 785 F.3d 625, 631 (Fed. Cir. 2015) (internal quotation marks omitted);
 13 *Graves v. Johnson*, 179 Mass. 53, 57 (1901) (Holmes, J.) (knowledge that product would be
 14 resold unlawfully in Maine is not enough for vicarious liability). The allegation is wholly
 15 insufficient and dooms PI's induced infringement allegations for the asserted patents. *CAP*, 2015
 16 WL 3945875, at *5.

17 Finally, PI is required to identify a nexus between any alleged inducing acts by Fairchild
 18 and the resulting alleged direct infringement of another. "[I]nducement must involve the taking
 19 of affirmative steps to bring about the desired result," *Global-Tech*, 131 S. Ct. at 2065, and "[t]he
 20 inducer must persuade another to engage in conduct that the inducer knows is infringement," *id.*
 21 at 2065. "[M]ere knowledge of infringing potential or of actual infringing uses would not be
 22 enough here to subject a distributor to liability. *Nor would ordinary acts incident to product*
 23 *distribution, such as offering customers technical support or product updates, support liability in*
 24 *themselves*" or a cause of action for that matter. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster,*
 25 *Ltd.*, 545 U.S. 913, 937 (2005) ("*MGM*") (emphasis added). "[S]pecific intent and action to
 26 induce infringement" are required. *DSU Med. Corp v. JMS Co.*, 471 F.3d 1293, 1305 (Fed. Cir,
 27 2006) (incorporating the *MGM* standard into patent law) (internal quotation marks omitted). PI's
 28

1 Amended Complaint provides no facts in plausible support of even the most basic inducement
2 case.

3 **2. PI's Amended Complaint Fails to State a Claim for Contributory**
4 **Infringement**

5 PI also fails to allege facts sufficient to support a claim for contributory infringement. A
6 claim of contributory infringement requires showing direct infringement by another and, among
7 other things: (1) that the accused components have no “substantial non-infringing use”; and (2)
8 that the accused products be “especially made or especially adapted” for an infringing use. *i4i*
9 *Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 851 (Fed. Cir. 2010). PI fails to allege facts that
10 plausibly show the underlying direct infringement necessary for contributory infringement.

11 Specifically, PI fails to sufficiently plead direct infringement by any specific customer or
12 distributor. The Amended Complaint also lacks any identification of any specific third-party
13 product incorporating Fairchild’s accused controller chips. It further fails to identify any third-
14 party product that enters the United States. Dkt. 30 at ¶¶ 20-21. PI’s allegation that “it can be
15 inferred that Defendants are aware that the United States is the ultimate destination of many of its
16 infringing products, as found in previous litigation” is insufficient to establish any underlying
17 direct infringement necessary to state a claim for contributory infringement. Dkt. 30 at ¶ 21. If
18 anything, PI’s allegation establishes that Fairchild’s controller chips exist outside the United
19 States and thus have substantial non-infringing uses. In short, PI’s contributory infringement
20 allegation must be dismissed because it simply posits conclusions and pleads facts that require
21 speculation about unnamed third parties and their unidentified products in order to support a
22 claim for relief. *CAP*, 2015 WL 3945875, at *6 (“Here, the only statement *CAP* offers on the
23 required element about substantial noninfringing uses is nothing but a bare conclusion. That does
24 not come close to an adequate factual allegation. Although *CAP* need not prove that the accused
25 products have no substantial noninfringing uses at the pleading stage, it must allege some facts
26 that take its statements from mere lawyerly fiat to a plausible conclusion—for example, by
27 alleging one or more infringing uses of the accused products and alleging that the products have
28 no other uses.”) (internal citations omitted).

V. CONCLUSION

For the foregoing reasons, the Court should dismiss PI's First Amended Complaint in its entirety as PI cannot assert infringement of the '079 patent by the products accused in this case and none of the allegations in PI's First and Second Causes of Action allege sufficient facts to support its allegations of direct infringement, willfulness, inducement and contributory infringement.

Dated: March 3, 2016

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